

### **REMARKS/ARGUMENTS**

Applicants again request reconsideration of the Official Action of September 21, 2009, and the Advisory Action dated January 6, 2010 relating to the above-identified application.

A request for a three-month extension of time together with the associated fee is filed herewith.

The claims in the case are Claims 1, 2 and 4.

Claims 1 and 2 stand rejected as allegedly anticipated under 35 U.S.C. § 102(b) in view of the European patent of *Ettlinger, et al.* (EP 0672731). Applicants again traverse the rejections and respectfully request reconsideration. As previously noted the European patent of *Ettlinger* is owned by the same assignee as in the present application. In fact co-inventor herein Juergen Meyer is also a named inventor in the cited European patent.

The Final Official Action takes the position that the European patent of *Ettlinger* anticipates the claimed subject matter. The Advisory Action takes the same position and comments further that the term “structurally modified” as used in the claims herein can be interpreted to include “molecular structure modification” as taught by *Ettlinger* because “... the instant specification has not defined the term ‘structurally modified’ to exclude such *molecular* structure modification”.

Counsel hereby acknowledges the telephonic interview of February 4, 2010 courteously granted by Examiner Godenschwager at which time the subject of presenting further evidence on the meaning of the term “structurally modified” as understood in this technology was discussed.

In response thereto, applicants initially wish to point out that this application is addressed to persons having ordinary skill in this art and that applicants are entitled to rely on the

knowledge of such persons as of the time of filing this application. Applicants are not required to include a dictionary in their application of terms that are known to persons having ordinary skill in the art. The claims of the present application require that the silanized structure modified silica is structurally modified. Applicants contend that persons skilled in this art would know what is meant by “structurally modified” and would further understand from a reading of the cited reference that no structural modification is shown in the *Ettlinger* European patent.

Filed herewith to further substantiate and establish this fact is the Second Declaration by Dr. Jürgen Meyer, one of the co-inventors named in this application and who is also an inventor named in the European patent. In his Second Declaration Dr. Meyer specifically addresses the position taken in the Advisory Action and in particular responds to the allegation that the term “structurally modified” encompasses what the Advisory Action refers to as “molecular structure modification” of *Ettlinger*.

On the second page of his Declaration, Dr. Meyer clearly explains that his European patent does not disclose a structurally modified silica and would not be understood by him as a person of at least ordinary skill in the art as disclosing a structure modified silica. He also clearly points out that his European patent does not disclose anything that would result in structural modification of silicas. The distinction between surface modification and structural modification is also noted by Dr. Meyer. And Dr. Meyer points out that this distinction is recognized by persons skilled in the art.

Dr. Meyer specifically notes that persons skilled in the art would know that the term “structure modified” does not include “molecular structure modifications” and thereby directly refutes the position taken by the PTO in the Advisory Action. Moreover, the terms used in the Advisory Action have no meaning or relevance in this technology.

It is clear from Dr. Meyer's Declaration that the *Ettlinger* patent does not disclose a structurally modified silica and does not contemplate a composition containing a structurally-modified silica. The evidence presented herein has not been refuted.

Dr. Meyer clearly states that the allegation in the Official Action as to the European patent disclosing a structurally modified silica is technically incorrect and is in error.

Accompanying Dr. Meyer's Second Declaration is a set of TEM microphotographs, one set in color with German language legends and the black and white copy with legends in English. The photos clearly show the difference between a silica that has been structure modified and one that has not been structure modified. At the top of each photo the scale of one micron is shown demonstrating that the same magnification was used in each photo.


The evidence presented by applicants speaks for itself and in applicants' view clearly refutes the positions taken by the PTO. Dr. Meyer has answered all the challenges posed by the Office Actions and has shown that they are without sound evidentiary basis.

Applicants request that the rejection be withdrawn and that the application be immediately allowed.

For the same reasons, applicants traverse the rejection of Claim 4 under 35 U.S.C. § 103(a) as unpatentable over *Ettlinger*, European Patent 0672731, further in view of *Koehlert*, US 5,928,723. The fact remains that neither of the references show a structurally modified silica product and consequently, the references relied on are missing an element of the claimed invention and cannot establish *prima facie* obviousness of the claimed invention.

Prompt action at the Examiner's earliest convenience is respectfully requested.

Respectfully submitted,  
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